

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

**TARIKA KELLY, RESPONDENT
MARIE ESPINO, RESPONDENT
vs.
MARVIN'S MIDTOWN CHIROPRACTIC, LLC, APPELLANT**

DOCKET NUMBER WD72747
(Consolidated with WD72748)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: NOVEMBER 1, 2011

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Gregory B. Gillis, Judge

Appellate Judges:

Division Three: Victor C. Howard, P.J., and Alok Ahuja, J.
Karen King Mitchell, J. DISSENTING IN SEPARATE OPINION.

Attorneys:

Andrew Schendel, for Respondents

Jerry W. Potocnik, for Appellant

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**TARIKA KELLY, RESPONDENT
MARIE ESPINO, RESPONDENT**

v.

MARVIN'S MIDTOWN CHIROPRACTIC, LLC, APPELLANT

WD72747 (Consolidated with WD72748)

Jackson County, Missouri

Before Division Three: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Marvin's Midtown Chiropractic, LLC, appeals the judgments of the trial court denying its claims for statutory liens on the proceeds of Tarika Kelly's and Marie Espino's personal injury settlements. It contends that the trial court erroneously declared that it was not entitled to a hospital lien under section 430.225, RSMo Cum. Supp. 2010, because it was not supported in whole or in part by charity. The judgments are reversed, and the case is remanded with directions.

REVERSED AND REMANDED.

Division Three holds:

Where the plain and ordinary language of section 430.225 gives clinics, health practitioners, and other institutions defined in the statute the right to assert hospital liens under section 430.230 to 430.250 without the requirement that they be supported in whole or in part by charity, the trial court erred in finding that Marvin's did not create a valid statutory lien on the proceeds of Ms. Kelly's and Ms. Espino's personal injury settlement proceeds.

Opinion by: Victor C. Howard, Judge

Date: November 1, 2011

Dissenting Opinion by Judge Karen King Mitchell:

Section 430.230 gives hospitals a qualified right to assert a lien. The author would hold that section 430.225.2 grants all health care providers the same qualified right that hospitals have under section 430.230.

The primary rule of statutory interpretation is to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute. Here, the plain and ordinary meaning of "same rights granted to hospitals in section[] 430.230" is not ambiguous. "Same rights" means that, under section 430.225, health care providers have rights that do not differ from the rights that hospitals have under section 430.230. As explained, the rights granted by section 430.230 only exist if the institution is public or charitable. Marvin's is neither: therefore, under the plain language of the statutes, it has no right to assert a lien. Granting a private, non-charitable institution rights when, under section 430.230, a private, non-charitable

hospital would have none would not be granting the former institution the “same rights granted to hospitals in section[] 430.230.” It would be granting the former institutions different – and greater – rights, rights that are subject to fewer qualifications. Thus, applying the majority’s reading of section 430.225 would contravene the plain meaning of “same rights,” and therefore I would reject such a reading.

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